

ORDINANCE 14-O-02 amending the Murfreesboro City Code, Appendix C, City of Murfreesboro, Tennessee Employees' Revised Pension Trust Agreement.

WHEREAS, the City of Murfreesboro has established a trust for the retirement benefits for its existing and retired full-time employees; and,

WHEREAS, the Internal Revenue Code provisions have been amended and are required to be included in the City's Pension Trust Agreement and it is desirable to make other changes to said document; and,

WHEREAS, the City is required to resubmit its plan to the Internal Revenue Service on a periodic basis with one such cycle existing currently.


NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. The document attached hereto as "Appendix C, City of Murfreesboro, Tennessee Employees' Revised Pension Plan" is hereby adopted in its entirety as a substitute for the existing Appendix C to the Murfreesboro City Code.

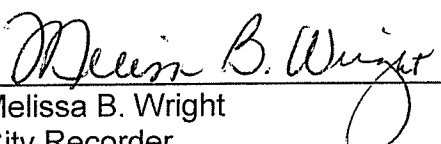
SECTION 2. That this Ordinance shall take effect fifteen (15) days after its passage upon third and final reading, the public welfare and the welfare of the City requiring it.

Passed:

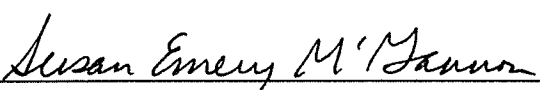
1st reading January 16, 2014
2nd reading October 16, 2014
3rd reading November 6, 2014


Shane McFarland, Mayor

ATTEST:


Melissa B. Wright
City Recorder

APPROVED AS TO FORM:


Susan Emery McGannon
City Attorney

SEAL

APPENDIX C

CITY OF MURFREESBORO, TENNESSEE, EMPLOYEES' REVISED PENSION PLAN

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ARTICLE I. DEFINITIONS

SECTION 1.01 AGE.

Shall mean actual age.

[Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.02 BASIC MONTHLY PENSION.

Shall mean the monthly retirement income payable for the life of a Retired Participant and, if sixty (60) monthly installments have not been paid prior to the Retired Participant's death, continuing thereafter to the Retired Participant's beneficiary until the combined number of installments paid to the beneficiary totals sixty (60).

[Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 01-O-54 §1, 08-23-01; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.03 BENEFICIARY.

Shall mean any person, estate, trust or organization entitled to receive any benefits which may be due under this Plan on the death of a Participant; and if there be no such designation, or the designated beneficiary predeceased the Participant, it shall mean

[Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 09-O-03 §1, 08-02-12]

Shall mean the U.S. Internal Revenue Code as amended. All references to Code sections shall include any applicable rulings and regulations, and as of any future date shall automatically incorporate any amendments to such sections, and shall be deemed to refer to any comparable provisions of any future laws.

Shall mean the monthly equivalent of the Participant's annual basic rate of pay in effect on the last day that the Participant is performing the duties of the Participant's Employment or office, excluding overtime pay, bonuses, uniform allowances, paid meal breaks and other extra compensation.

Notwithstanding the foregoing, Compensation shall be subject to the limitations specified in Section 9.02 herein.

Shall mean the date that a Participant, other than a firefighter or a police officer, has attained either:

- (A) Age fifty-five (55) or more with twenty-five (25) years or more of Employment with the Employer, or
- (B) Age sixty-two (62) or more with twenty (20) years or more of Employment with the Employer.

Shall mean the City of Murfreesboro, Tennessee, and any entity succeeding it which shall assume the obligation of this Plan.

[Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.08**EMPLOYMENT.**

Shall mean a continuous and uninterrupted year or years during which a person is included on the employment rolls of the City of Murfreesboro or serves as an officer of the City, and receives payment for work, or for accrued hours of compensatory time, vacation time or sick leave, unless such payment for accrued hours is made because of, and at the time of, the Participant's termination of employment. Employment shall include qualified military service in accordance with section 9.05. Employment shall also include any period of leave of absence for which pension credit is granted by the employment policies of the City of Murfreesboro, as evidenced by its Employee Handbook, or any other written policy which is generally distributed to employees and which is uniformly applied to all employees of the Employer or to all employees within one or more classifications, and which is in effect during such period of time. Except as provided in section 9.05, in the event a Participant has two (2) or more distinct periods of employment, each commencing before July 1, 2010, the Participant shall be credited with employment equal to the sum of all such periods.

[Ord. No. 93-O-40 §2, 08-12-93; Ord. No. 94-O-16 §1, 06-09-94; Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 00-O-74 §1, 01-18-01; Ord. No. 01-O-54 §2, 08-23-01; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.09**FULL-TIME EMPLOYEE.**

A full-time employee is a person employed to work a minimum of thirty (30) hours per week for a continuous period of six (6) months or more and who is not employed as a temporary employee for a limited term on or before June 30, 2010.

[Ord. No. 87-57 §1, 10-22-87; Ord. No. 89-4 §1, 01-12-89; Ord. No. 93-O-40 §1, 08-12-93; Ord. No. 95-O-65 §1, 11-16-95; Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 10-O-23 §1, 06-03-10; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.10**RESERVED.**

[Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 11-O-25 §1, 09-22-11; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.11**MASCULINE, FEMININE, SINGULAR AND PLURAL.**

The masculine shall be read in the feminine, and singular shall be read in the plural and the plural in the singular, wherever the context or person shall plainly so require.

[Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.12**NORMAL RETIREMENT DATE.**

(A) Normal retirement date shall mean:

- (1) For a Participant classified as a firefighter or police officer, such Participant's fifty-fifth (55th) birthday.

- (2) For a Participant classified as any other type of employee, such Participant's sixty-fifth (65th) birthday or the date of such Participant reaching the minimum age of fifty-five (55) years with thirty (30) years of Employment.
 - (3) Retirement at and after the normal retirement date shall be at the option of the Participant provided that Participant is physically and mentally capable of performing the duties and responsibilities of the Participant's job.
 - (4) For the period ending December 31, 2000, Participants classified as (i) firefighter; (ii) police officer; (iii) laborer; or, (iv) driver in the Solid Waste Department, such Participants reaching the minimum age of fifty (50) with twenty (20) years of Employment. Participants in the Fire and Police Departments classified as "administration" are not included or eligible.
 - (5) For the period ending June 30, 2003, Participants classified as a Plant Mechanic, Chief Mechanic, Equipment Operator, or Plant Mechanical Electrician in the Water and Sewer Department, Light Equipment Operator in the Street or Solid Waste Department, Driver in the Solid Waste Department, Mechanic in the Fleet Services Department, and Participants employed as firefighters or police officers who are not assigned to an administrative position, and reaching the minimum age of fifty (50) years with twenty (20) years of Employment.
 - (6) For the period ending December 31, 2006 Participants classified as a Construction Worker, Construction Laborer, Plant Mechanic, Chief Mechanic, Equipment Operator, or Plant Mechanical Electrician in the Water and Sewer Department, Laborer or Light Equipment Operator in the Street or Solid Waste Department, Driver in the Solid Waste Department, Mechanic in the Fleet Services Department, and Participants employed as firefighters or police officers who are not assigned to an administrative position, and reaching the minimum age of fifty (50) years with twenty (20) years of Employment.
- (B) Notwithstanding subsection (A) above, no Participant shall be eligible for retirement until the fifth (5th) anniversary of the employee's date of participation.

[Ord. No. 79-10 §1, 03-29-79; Ord. No. 86-25B §1, 08-28-86; Ord. No. 86-52 §1, 09-25-86; Ord. No. 87 57 §2, 10-22-87; Ord. No. 88-39 §1, 07-20-88; Ord. No. 95-O-77 §1, 01-18-96; Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 00-O-37 §1, 06-01-00; Ord. No. 01-O-54 §3, 08-23-01; Ord. No. 02-O-67 §1, 01-09-03; Ord. No. 06-O-36 §1, 07-13-06; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.13

PARTICIPANT.

Shall mean a person who becomes covered under this Plan as provided in Article II. Participant shall mean any person who is an officer of the Employer, who assumed office on or before June 30, 2010 and any person who is regularly employed by the Employer on a full-time basis who became so employed on that basis on or before June 30, 2010, excluding (1) any person who is not a full-time employee; (2) any person under the supervision of Murfreesboro Electric Department; (3) any person under the supervision of the Board of Education or City school system; (4) any person under the supervision of the Linebaugh Public Library Board; (5) any person under the supervision of the Evergreen Cemetery Commission; and (6) any person under the supervision of

the Murfreesboro Housing Authority Board.

[Ord. No. 79-10 §1, 03-29-79; Ord. No. 86-25B §1, 08-28-86; Ord. No. 86-52 §1, 09-25-86; Ord. No. 87-57 §2, 10-22-87; Ord. No. 88-39 §1, 07-20-88; Ord. No. 95-O-77 §1, 01-18-96; Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 00-O-37 §1, 06-01-00; Ord. No. 01-O-54 §3, 08-23-01; Ord. No. 02-O-67 §1, 01-09-03; Ord. No. 06-O-36 §1, 07-13-06; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.14 PARTICIPANT WITH A DISABILITY

Shall mean an employee or former employee who is not at work and who is receiving long term disability insurance benefits under an insurance policy provided by the Employer.

SECTION 1.15 PLAN.

Shall mean this document and the pension plan and trust with reference thereto embodied in this document, as the same may be amended from time to time. The Plan shall be known as the City of Murfreesboro, Tennessee, Employees' Revised Pension Plan.

[Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.16 PLAN YEAR.

Shall mean each twelve (12) month period commencing July 1 and ending on the next June 30.

[Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.17 PENSION COMMITTEE.

Shall mean the committee established in accordance under Article X herein.

[Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.18 RETIRED PARTICIPANT.

Shall mean a former Participant of this Plan who has retired under its retirement provisions.

[Ord. No. 00-O-28 §2, 06-01-00; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.19 RESERVED.

[00-O-28 §1, 06-01-00 Ord. No. 09-O-03 §1, 08-02-12]

SECTION 1.20**TRUSTEE.**

Trustee shall mean the person or entity appointed by the Employer to serve as Trustee for the Plan.

[Ord. No. 05-O-57 §1, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE II. ELIGIBILITY AND MEMBERSHIP**SECTION 2.01.**

All employees who satisfied the requirements of Section 1.13 became Participants on the first day of the month next following the date that such employee completed ninety (90) days of Employment, provided that the first day of full-time Employment was on or before June 30, 2010.

[Ord. No. 86-25B §3, 08-28-86; Ord. No. 87-57 §3, 10-22-87; Ord. No. 93-O-40 §4, 08-12-93; Ord. No. 01-O-54 §5, 08-23-01; Ord. No. 10-O-23 §3, 06-03-10; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 2.02.

All new officers who satisfied the requirements of Section 1.13 became Participants on the first day of the month next following the date that such officer completed ninety (90) days in office.

[Ord. No. 93-O-40 §5, 08-12-93; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 2.03.

A Participant must continue to meet the requirements of eligibility in order to remain a Participant hereunder. All Participants as of July 18, 1986, and all employees hired after July 18, 1986, but before July 1, 2010, who are eligible to participate in the Plan, must be a Participant as a condition of employment.

[Ord. No. 86-25B §5, 08-28-86; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE III. RESERVED

[Ord. No. 11-O-25 §1, 09-22-11; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE IV. RETIREMENT BENEFITS

SECTION 4.01.

Each Participant shall be entitled to receive a basic monthly pension, commencing at the Participant's Normal Retirement Date, computed as follows: Two percent (2%) of the Participant's highest five (5) years average monthly Compensation times the Participant's completed years of Employment, not in excess of thirty (30) years of Employment, with the first sixty (60) monthly payments guaranteed. In no event shall the Participant's basic monthly pension exceed sixty percent (60%) of such Participant's highest five (5) years average monthly compensation.

[Ord. No. 86-25B §6, 08-28-86; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 4.02.

Early retirement is available to Participants who have attained the Early Retirement Date as defined in Section 1.06. Participants must elect to take an Early Retirement Date. The amount of basic monthly pension shall be actuarially reduced.

[Ord. No. 80-31 §1, 09-11-80; Ord. No. 86-25B §7, 08-28-86; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 4.03.

Any employee who elects to work beyond normal retirement as defined in Section 1.12 shall continue to participate in the Plan until such employee's retirement. Salary for the last years may be considered in calculating the highest five (5) year's salary. The amount of the basic monthly pension shall not be actuarially increased.

[Ord. No. 86-25B §8, 08-28-86; Ord. No. 87-57 §4, 10-22-87; Ord. No. 01-O-54 §6, 08-23-01; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 4.04.

Any Participant may elect an alternate method of payment of such Participant's retirement benefits, provided such election is made at least thirty (30) days prior to the Participant's commencement of benefit payments from the Plan. Alternate forms of annuities available are joint and survivor annuities with 50%, 75%, or 100% payments to the surviving contingent annuitant; single life annuities; and certain and life annuities with ten (10) or fifteen (15) years certain. Any alternate method of payment shall be actuarially equivalent to the retired Participant's basic monthly pension.

The monthly pension amount of a Participant who retires mid-month shall receive a pro-rated portion of the basic monthly pension amount based on the number of days of retirement in that month.

[Ord. No. 86-25B §9, 08-28-86; Ord. No. 91-35 §1, 06-20-91; Ord. No. 93-O-40 §8, 08-

SECTION 4.05.

Actuarially equivalent benefits shall be benefits equivalent in value when computed for both males and females on the basis of a seven and one-half percent (7-1/2%) interest rate and the UP-1984 Mortality Table. In computing the value of any optional form of benefit which involves a contingent annuitant, the contingent annuitant benefit shall be determined using the same seven and one-half percent (7-1/2%) interest rate and using a UP-1984 Mortality Table based upon an age for the contingent annuitant that is three (3) years younger than the annuitant's true chronological age.

Notwithstanding the foregoing, the mortality table and the interest rate for the purposes of determining the limitation on benefits per Section 9.01 shall be the "Applicable Mortality Table" and the "Applicable Interest Rate" described below:

- (a) The "Applicable Mortality Table" means the table prescribed by the Secretary of the Treasury. Such table shall be based on the prevailing commissioner's standard table (described in Code section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of Code Section 807(d)(5)). Subsections (1) and (2) below shall apply to distributions with annuity starting dates on or after August 1, 2002.
 - (1) Notwithstanding any other Plan provisions to the contrary, the "Applicable Mortality Table" used for purposes of adjusting any benefit or limitation under Code section 415(b)(2)(B), (C), or (D) as set forth in Section 4.05 of the Plan and the "Applicable Mortality Table" used for purposes of satisfying the requirements of Code section 417(e) as set forth in Section 4.05 is the table prescribed in Rev. Rul. 2001-62.
 - (2) For any distribution with an annuity starting date on or after the effective date of these Subsections and before the adoption date of these Subsections, if application of the amendment as of the Annuity Starting Date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payments made before the adoption date of these Subsections. However, the amount of any such reduction that is required under Code section 415(b)(2)(B) must be reflected actuarially over any remaining payments to the Participant.
- (b) The "Applicable Interest Rate" means the annual rate of interest on 30-year Treasury securities determined as of the second full month prior to the first day of the Plan Year in which the annuity starting date occurs. However, except as provided in Regulations, if a Plan amendment (including this restatement) changes the time for determining the "Applicable Interest Rate" (including an indirect change as a result of a change in the Plan Year), any distribution for which the annuity starting date occurs in the one-year period commencing at the time the Plan amendment is effective (if the amendment is effective on or after

the adoption date) must use the interest rate as provided under the terms of the Plan after the effective date of the amendment, determined at either the date for determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution. If the Plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the Plan must use the interest rate determination date resulting in the larger distribution for the period beginning with the effective date and ending one year after the adoption date.

[Ord. No. 91-35 §2, 06-20-91' Ord. No. 09-O-03 §1, 08-02-12]

SECTION 4.06.

Participants who retired from the Employer before January 1, 1997 shall receive a cost of living allowance (COLA) increase to the basic monthly pension effective September 1, 1997. The COLA applies only to Participants who retired before January 1, 1997 and it is on a one-time basis. Future retirees shall not have any promise of COLAs and current Participants shall have no promise of future COLAs. The Participants who retired before January 1, 1997 shall receive an adjustment to their basic monthly pension based on the change in the Consumer Price Index (CPI) from the end of the year in which they retired to the end of 1996 based upon the "All Urban Consumers" index, which is published each month by the U.S. Department of Labor. The amount of the COLA will depend on whether the Participant retired before July 1, 1987. For those Participants who retired before July 1, 1987, the increase shall be equal to the percentage change in the CIP from the end of the year of retirement to the end of 1996. For those who retired on or after July 1, 1987, the COLA shall be subject to a limit of three percent (3%) per year on a compound basis. Participants who retired during 1996 shall receive a three percent (3%) COLA increase to their basic monthly pension.

[Ord. No. 97-O-53 §1, 09-11-97; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 4.07.

Participants who retired from the Employer before January 1, 2005 shall receive a cost of living allowance (COLA) increase to the basic monthly pension effective July 1, 2006. The COLA applies only to Participants who retired before January 1, 2005 and it is on a one-time basis. Future retirees shall not have any promise of COLAs and current Participants shall have no promise of future COLAs. The Participants who retired before January 1, 2005 shall receive an adjustment to their basic monthly pension based on the change in the Consumer Price Index (CPI) from the end of the year in which they retired to December 31, 2005 based upon the "All Urban Consumers" index, which is published each month by the U.S. Department of Labor. The adjustment for each eligible Participant will be equal to the lesser of the CPI increase or an annual compound increase of one and five tenths percent (1.5%), for each year beginning January 1, 1997 or the end of the year they retired, whichever is later, through December 31, 2005.

SECTION 4.08.

In-service distributions are not permitted under the Plan. Effective January 1, 2013, should in-service distributions be permitted, such distributions shall not occur until a Participant has attained age 62.

SECTION 4.09.

Qualified Reservist Distributions as provided under Code section 401(k)(2)(B)(i)(V) are not permitted under the Plan.

[Ord. No. 06-O-36 §2, 07-13-06; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE V. RESERVED

[Ord. No. 97-O-16 §1, 05-08-97; Ord. No. 11-O-25 §1, 09-22-11; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE VI. DEATH BENEFITS

SECTION 6.01. RESERVED.

[Ord. No. 79-10 §2, 03-29-79; Ord. No. 86-25B §10, 08-28-86; Ord. No. 00-O-03 §2, 05-04-00; Ord. No. 11-O-26 §1, 09-22-11; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 6.02.

In the event that a Participant dies while employed after becoming vested or a Participant with a Disability dies after becoming vested, the Participant's spouse shall be entitled to a monthly annuity payable beginning on the date that would have been the Participant's Normal Retirement Date. The monthly benefit shall be the spouse's share of the fifty percent (50%) joint and survivor annuity, based on the Participant's vested accrued benefit at the date of death. The fifty percent (50%) joint and survivor annuity is determined as if the Participant had actually lived until Normal Retirement Date, elected the fifty percent (50%) joint and survivor annuity form, and then died.

If a Participant or a Participant with a Disability has attained Normal Retirement Date or Early Retirement Date at the time of death, the Participant's spouse shall have the option of taking a spouse's share of a fifty percent (50%) joint and survivor benefit, payable immediately, determined as if the Participant had retired immediately before death. Any benefits taken using an Early Retirement Date shall be subject to actuarial reduction as provided for in Section 4.02.

[Ord. No. 00-O-03 §1, 05-04-00; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 6.03.

In the event that a Participant without a spouse dies while employed after becoming vested or a Participant with a Disability without a spouse dies after becoming vested, the Participant's Beneficiary shall be entitled to a single payment equal to the present value of sixty monthly payments of the Participant's vested accrued benefit as calculated under Section 4.01 actuarially reduced based on the number of years between the date of the Participant's death and the Participant's Normal Retirement Date.

[Ord. No. 09-O-36 §1, 10-01-09; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE VII. TERMINATION OF EMPLOYMENT

SECTION 7.01.

A Participant with a Disability shall be entitled to receive benefits under Article IV at any time after termination if the Participant has the years of Employment and attains the age required for an Early Retirement Date or a Normal Retirement Date.

SECTION 7.02.

- (A)(1) A Participant, other than a Participant with a Disability, whose Employment is terminated after five (5) years of participation, but before the Participant is eligible to receive benefits under Articles IV, or VI shall be entitled to a deferred vested benefit. The deferred vested benefit shall be payable on the Participant's sixty-fifth (65th) birthday, if the Participant is then living, and on the first day of each calendar month thereafter during the Participant's lifetime, with the first sixty (60) monthly payments guaranteed.
- (2) The amount of the deferred vested benefit shall be the amount of benefits calculated pursuant to Section 4.01 (accrued benefits) at the date of termination. A Participant is fully vested after five (5) years participation. All years of service as an officer of the Employer, or as an employee of the Employer satisfying the requirements of 1.13, shall be included for the purposes of vesting, and accrual of benefits pursuant to Section 4.01.
- (3) In lieu of the benefit under subsection 7.02(A)(2), a Participant may elect to receive a refund of the Participant's entire contributions to the Plan, together with interest compounded annually at the rate of seven and one-half percent (7.5%) per annum. If the Participant makes this election under subsection 7.02(A)(3) the Participant shall forfeit any other benefit due under any other terms of this Plan.
- (4) A Participant whose Employment is terminated when the Participant is eligible to receive benefits under Article IV, may elect to receive those benefits at any time after termination.
- (B) Notwithstanding subsection 7.02(A), if a vested former employee dies before age 65 without a spouse surviving, the former employee's Beneficiary shall be entitled to a

single payment equal to the present value of sixty monthly payments of the former employee's vested accrued benefit as calculated under Section 4.01 actuarially reduced based on the number of years between the date of the former employee's death and the former employee's sixty-fifth (65th) birthday.

- (C) Notwithstanding subsection 7.02(A), if a vested former employee dies before age 65 with a spouse surviving and the Participant is entitled to a deferred vested benefit under this Plan, the surviving spouse shall receive a monthly annuity benefit starting at the time the Participant would have reached age 65 and the monthly annuity shall be calculated based upon the benefit the former employee would have been entitled to on such employee's 65th birthday as if the former employee had made an election for joint and fifty percent survivor annuity with the surviving spouse as contingent annuitant.

[Ord. No. 90-29 §1, 06-21-90; Ord. No. 91-13 §1, 02-14-91; Ord. No. 93-O-40 §9, 08-12-93; Ord. No. 01-O-54 §7, 08-23-01; Ord. No. 09-O-36 §2, 10-01-09; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE VIII. CONTRIBUTIONS

SECTION 8.01.

The Employer shall contribute the cost of the Plan, such contributions to be made on an annual or monthly basis or as otherwise determined by the Employer. In addition, the Employer shall pay any and all costs incident to the operation of the Plan.

[Ord. No. 88-39 §2, 07-20-88; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 8.02 RESERVED.

[Ord. No. 88-39 §2, 07-20-88; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 8.03.

Upon the request of the Employer, the Pension Committee shall obtain actuarial computations and review of the Plan. Such actuarial computations shall be such as are acceptable to the Internal Revenue Service.

[Ord. No. 88-39 §2, 07-20-88; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 8.04.

All amounts which are contributed by the Employer to the Trustee shall be irrevocable contributions to this trust.

[Ord. No. 88-39 §2, 07-20-88; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 8.05.

The right is reserved by the Employer at any time to reduce, suspend or discontinue its contributions hereunder.

[Ord. No. 88-39 §2, 07-20-88; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE IX. LIMITATIONS AND QUALIFICATION REQUIREMENTS

SECTION 9.01.

This Section describes the benefit limitations based on Code Section 415. Capitalized terms, if not defined in Article I, are defined in subsection (E) of this Section except as otherwise indicated.

- (A) The limitations of this Section 9.01 shall apply in Limitation Years beginning on or after July 1, 2007, except as otherwise provided herein.
- (B) The Annual Benefit otherwise payable to a Participant at any time shall not exceed the Maximum Permissible Benefit. If the benefit the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to the extent necessary so that the benefit does not exceed the Maximum Permissible Benefit.
- (C) If the Participant is, or has ever been, a Participant in another qualified defined benefit plan maintained by the Employer (or a predecessor employer), the sum of the Participant's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the Participant's Employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the Employer will reduce the rate of accrual in this Plan to the extent necessary so that the total Annual Benefit payable at any time under such plans will not exceed the Maximum Permissible Benefit.
- (D) The application of the provisions of this Section 9.01 shall not cause the Maximum Permissible Benefit for any Participant to be less than the Participant's Accrued Benefit under all the defined benefit plans of the Employer as of the end of the last Limitation Year beginning before July 1, 2007, under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007, satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code section 415 in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in section 1.415(a)-1(g)(4) of the Regulations.
- (E) Definitions. For purposes of this Section 9.01, the following terms shall be defined as follows:
 - (1) Annual Benefit: shall mean a benefit that is payable annually in the form of a straight-life annuity. Except as provided below, where a benefit is payable in a

form other than a straight-life annuity, the benefit shall be adjusted to an actuarially equivalent straight-life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Section 9.01. For a Participant who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section 9.01 as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to section 1.401(a)-20, Q&A 10(d), and with regard to section 1.415(b)(1)(b)(1)(iii)(B) and (C) of the Regulations.

No actuarial adjustment to the benefit shall be made for (i) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (ii) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (iii) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code section 417(e)(3) and would otherwise satisfy the limitations of this Section 9.01, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Section 9.01 applicable at the annuity starting date, as increased in subsequent years pursuant to Code section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account social security supplements described in Code section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant section 1.411(d)-4, Q&A-3(c) of the Regulations, but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight-life annuity shall be made in accordance with subsections (a) or (b) below.

(a) Benefit Forms Not Subject to § 417(e)(3). The straight-life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this subsection (a) if the form of the Participant's benefit is either (1) a nondecreasing annuity (other than a straight-life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the Participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code section 401(a)(11)).

- [1] Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight-life annuity is equal to the annual amount of the straight-life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in Section 4.05 of the Plan for adjusting benefits in the same form; and (II) a 5-percent (5%) interest rate assumption and the applicable mortality table defined in Section 4.05 of the Plan for that annuity starting date.
- [2] Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight-life annuity is equal to the greater of (I) the annual amount of the straight-life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and (II) the annual amount of the straight-life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5-percent (5%) interest rate assumption and the applicable mortality table defined in Section 4.05 of the Plan for that annuity starting date.
- (b) Benefit Forms Subject to § 417(e)(3). As a governmental plan there are no benefits subject to Code section 417(e)(3).

- (2) Compensation: shall mean all of a Participant's wages within the meaning of Code section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code section 3401(a)(2)).

For any self-employed individual, "Compensation" will mean earned income. Except as provided herein, for Limitation Years beginning after December 31, 1991, Compensation for a limitation year is the Compensation actually paid or made available during such limitation year.

For Limitation Years beginning on or after July 1, 2007, Compensation for a Limitation Year shall also include Compensation paid by the later of 2 1/2 months after an Employee's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer, if:

- (a) the payment is regular Compensation for services during the Employee's regular working hours, or Compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer; or,

- (b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or
- (c) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2 1/2 months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except, (i) payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service; or (ii) compensation paid to a Participant who is permanently and totally disabled, as defined in Code section 22(e)(3), provided, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a highly compensated employee, as defined in Code section 414(q), immediately before becoming disabled.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the Regulations, shall be treated as compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

For Limitation Years beginning after December 31, 1997, compensation paid or made available during such Limitation Year shall include amounts that would otherwise be included in Compensation, but for an election under Code sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b).

For Limitation Years beginning on and after January 1, 2001, Compensation also shall include elective amounts that are not includible in the gross income of the Employee by reason of Code section 132(f)(4).

- (3) Defined Benefit Compensation Limitation: As a governmental plan, this Plan is not subject to the 100% compensation limit of Code Section 415(b).
- (4) Defined Benefit Dollar Limitation: shall mean, as of the effective date of this restatement, two hundred five thousand dollars (\$205,000) (the limit for the 2013 fiscal year), as may be automatically adjusted, effective January 1 of each year, by the Secretary of the Treasury under Code section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight-life annuity. A limitation as adjusted under Code section 415(d) will apply to Limitation Years ending with or within the calendar year for which the adjustment applies, but a

Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment provided under Code section 415(d) shall apply to Participants who have had a separation from employment.

- (5) Employer: shall, for purposes of this Section 9.01, mean the Employer that adopts this Plan, and all Participants of a Controlled Group (as modified by Code section 415(h)) of which the Employer is a Participant.
- (6) Limitation Year: shall mean the Plan Year. All qualified plans maintained by the Employer shall use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, then the new Limitation Year shall begin on a date within the Limitation Year in which the amendment is made.
- (7) Maximum Permissible Amount: shall mean the Defined Benefit Dollar Limitation adjusted where required and to the extent applicable pursuant to subsections (a) and (b) below.
 - (a) Adjustment for Less Than 10 Years of Participation or Service. If the Participant has less than ten (10) Years of Participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction (i) the numerator of which is the number of Years (or part thereof, but not less than one (1) year) of Participation in the Plan, and (ii) the denominator of which is 10.
 - (b) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement after Age 65. The Defined Benefit Dollar Limitation shall be adjusted if the annuity starting date of the Participant's benefit is after age 65, as follows:
 - [1] Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight-life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Subsection (7)(A) above for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and the mortality table (or other tabular factor) specified in Section 4.05 of the Plan; or (2) a five-percent (5%) interest rate assumption and the applicable mortality table defined in Section 4.05 of the Plan.
 - [2] Limitation Years Beginning on or after July 1, 2007.
 - (i) Plan Does Not Have Immediately Commencing Straight-Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight-life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight-life

annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Subsection (7)(a) above for Years of Participation less than 10, if required), with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for that annuity starting date as defined in Section 4.05 of the Plan (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

(ii) Plan Has Immediately Commencing Straight-Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement.

If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight-life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's annuity starting date is the lesser of the limitation determined under Subsection (7)(b)[2][(i) and the Defined Benefit Dollar Limitation (adjusted under Subsection (7)(a) above for Years of Participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight-life annuity under the Plan at the Participant's annuity starting date to the annual amount of the adjusted immediately commencing straight-life annuity under the Plan at age 65, both determined without applying the limitations of this Section 9.01. For this purpose, the adjusted immediately commencing straight-life annuity under the Plan at the Participant's annuity starting date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight-life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

- (c) Notwithstanding the other requirements of this Subsection (7)(b), in adjusting the Defined Benefit Dollar Limitation for the Participant's annuity starting date under Subsections (7)(B)(1) and (7)(B)(2)(i), no adjustments shall be made to reflect the probability of a Participant's death between age 65 and the annuity starting date if benefits are not forfeited upon the death of the Participant prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code section 417(c) upon the Participant's death.

(8) Minimum benefit permitted. Notwithstanding anything else in this definition to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

[1] the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction (I) the numerator of which is the Participant's number of Years (or part thereof, but not less than one (1) year) of Service (not to exceed 10) with the Employer, and (II) the denominator of which is 10; and

[2] the Employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Code section § 401(h), and accounts for postretirement medical benefits established under Code section § 419A(d)(1) are not considered a separate defined contribution plan).

(F) Notwithstanding any provision of this Section 9.01, the application of this Section shall be subject to such rules as may be prescribed by the Secretary of the Treasury.

[Ord. No. 00-O-74 §4, 01-18-01; Ord. No. 02-O-44 §1, 06-20-02; Ord. No. 05-O-57 §2, 09-15-05 Ord. No. 09-O-03 §1, 08-02-12]

SECTION 9.02

LIMITATION ON COMPENSATION.

For purposes of computing any benefit under the Plan or any contribution made to the Plan, there shall be a limit on the amount of compensation that may be considered in any Plan Year for any Participant. The limit shall be the amount specified in this section as described below. The limit contained in this section 9.02 shall apply to compensation as defined in section 1.05 and to compensation as defined in section 9.01(E)(2).

(A) For any Plan Year commencing before January 1, 1994, the annual compensation of each Participant taken into account under the Plan for any such year shall not exceed Two Hundred Thousand and 00/100 Dollars (\$200,000.00), as adjusted by the Secretary of the Treasury at the same time and in the same manner as under section 415(d) of the Code, except that the dollar increase on January 1 of any calendar year is effective for years beginning in such calendar year and the first adjustment to the \$200,000 limitation is effective on January 1, 1990. If the Plan determines compensation on a period of time that contains fewer than twelve (12) calendar months, then the annual compensation limit is an amount equal to the annual compensation limit for the calendar year in which the compensation period begins multiplied by the ratio obtained by dividing the number of full months in the period by twelve (12). In determining the compensation of a Participant for purposes of this limitation, the rules of section 414(q)(6) of the Code shall apply, except in applying such rules, the term "family" shall include only the Spouse of the Participant

and any lineal descendants of the Participant who have not attained age nineteen (19) before the close of the year. If, as a result of the application of such rules, the adjusted \$200,000 limitation is exceeded, then the limitation shall be prorated among the affected individuals in proportion to each such individual's compensation as determined under this section prior to the application of this limitation. The application of this paragraph shall be subject to such rules as may be prescribed by the Secretary of the Treasury. If compensation for any year prior to 1989 is taken into account in determining an employee's benefits for the current year, the compensation for such prior year is subject to the applicable annual compensation limit in effect for that prior year. For this purpose, for years beginning before January 1, 1989, the applicable annual compensation limit is \$200,000.

- (B) This subsection is effective for Plan Years commencing after December 31, 1993. For any Plan Year, the annual compensation of each Participant taken into account under the Plan for any such year shall not exceed One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00), as adjusted by the Secretary of the Treasury at the same time and in the same manner as under section 401(a)(17)(B) of the Code, provided that the dollar increase on January 1 of any calendar year is effective for years beginning in such calendar year and the first adjustment to the \$150,000 limitation is effective on January 1, 1995. If the Plan determines compensation on a period of time that contains fewer than twelve (12) calendar months, then the annual compensation limit is an amount equal to the annual compensation limit for the calendar year in which the compensation period begins multiplied by the ratio obtained by dividing the number of full months in the period by twelve (12). The application of this paragraph shall be subject to such rules as may be prescribed by the Secretary of the Treasury. If compensation for any year prior to 1994 is taken into account in determining an employee's benefits for the current year, the compensation for such prior year is subject to the applicable annual compensation limit in effect for that prior year. For this purpose, for years beginning before January 1, 1994, the applicable annual compensation limit is \$150,000.
- (C) This subsection is effective only for Plan Years commencing after December 31, 1993 but before January 1, 1997. In determining the compensation of a Participant for purposes of subsection (B) above, the rules of section 414(q)(6) (as in effect prior to January 1, 1997) of the Code shall apply, except in applying such rules, the term "family" shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age nineteen (19) before the close of the year. If, as a result of the application of such rules, the adjusted One Hundred Fifty Thousand and 00/100 Dollar (\$150,000.00) limitation is exceeded, then the limitation shall be prorated among the affected individuals in proportion to each such individual's compensation as determined under this section prior to the application of this limitation.
- (D) This subsection is effective for Plan Years beginning after December 31, 2001. The annual compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001, shall not exceed \$200,000. Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, the annual compensation limit under this section for determination periods beginning before

The \$200,000 limit on annual compensation in this subsection (D) shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

SECTION 9.03 MINIMUM DISTRIBUTIONS.

- (1) **Precedence.** The requirements of this Section shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of the Plan.
- (2) **Requirements of Regulations incorporated.** All distributions required under this Section shall be determined and made in accordance with Code section 401(a)(9), as applicable, including the incidental death benefit requirement in Code section 401(a)(9)(G) and the Regulations thereunder, all of which are incorporated herein by reference. The Plan shall be treated as having complied with Code section 401(a)(9) for all years to which Code section 401(a)(9) applies to the Plan so long as the Plan complies with a reasonable and good faith interpretation of Section 401(a)(9). These rules are summarized in this Section 4.07.
- (3) **Limits on Distribution Periods.** As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:
 - (i) the life of the Participant,
 - (ii) the joint lives of the Participant and a Designated Beneficiary,
 - (iii) a period certain not extending beyond the life expectancy of the Participant, or
 - (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary.
- (4) **TEFRA Section 242(b)(2) elections.**
 - (i) Notwithstanding the other requirements of this Section, distribution on behalf of any employee who has made a designation under Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "Section 242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):

- (A) The distribution by the Plan is one which would not have disqualified such plan under Code section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
 - (B) The distribution is in accordance with a method of distribution designated by the employee whose interest in the Plan is being distributed or, if the employee is deceased, by a beneficiary of such employee.
 - (C) Such designation was in writing, was signed by the employee or beneficiary, and was made before January 1, 1984.
 - (D) The employee had accrued a benefit under the Plan as of December 31, 1983.
 - (E) The method of distribution designated by the employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the employee's death, the beneficiaries of the employee listed in order of priority.
- (ii) A distribution upon death will not be covered by the transitional rule of this Subsection (4) unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the employee.
 - (iii) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the employee, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (i)(A) and (i)(E) above.
 - (iv) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code section 401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code section 401(a)(9) and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to

be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

- (v) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation Section 1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

(b) Time and manner of distribution.

- (1) **Required beginning date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "Required Beginning Date."
- (2) **Death of Participant before distributions begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (i) **Life expectancy rule, spouse is Beneficiary.** If the Participant's surviving spouse is the Participant's sole "Designated Beneficiary," then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.
 - (ii) **Life Expectancy Rule, Spouse is not Beneficiary.** If the Participant's surviving spouse is not the Participant's sole "Designated Beneficiary," then distributions to the "Designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (iii) **No Designated Beneficiary, 5-Year Rule.** If there is no "Designated Beneficiary" as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (iv) **Surviving Spouse dies before Distributions Begin.** If the Participant's surviving spouse is the Participant's sole "Designated Beneficiary" and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, then this Subsection (b), other than Subsection 2(i), will apply as if the surviving spouse were the Participant.

For purposes of this Subsection (b)(2) and Subsection (c)(4), unless Subparagraph (2)(iv) above applies, distributions are considered to begin on the Participant's "Required Beginning Date." If Subparagraph

(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Subparagraph (2)(i). If distributions under an annuity meeting the requirements of this Section 9.03 commence to the Participant before the Participant's "Required Beginning Date" (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Subparagraph (2)(i), the date distributions are considered to begin is the date distributions actually commence.

- (3) **Form of distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the "Required Beginning Date," as of the first "Distribution Calendar Year," distributions will be made in accordance with Sections 9.03(c), 9.03(d), and 9.03(e). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code section 401(a)(9) and the Regulations thereunder.

(c) **Determination of amount to be distributed each year.**

- (1) **General annuity requirements.** If the Participant's interest is to be paid in the form of annuity distributions under the Plan, payments under the annuity shall satisfy the following requirements:
- (i) The annuity distributions will be paid in periodic payments made at intervals not longer than one year.
 - (ii) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 9.03(d) or (e).
 - (iii) Once payments have begun over a period, the period will be changed only in accordance with Section 9.03(f).
 - (iv) Payments will either be nonincreasing or increase as follows:
 - (A) by an annual percentage increase that does not exceed the percentage increase in an "Eligible Cost-of-Living Index" for a 12-month period ending in the year during which the increase occurs or the prior year;
 - (B) by a percentage increase that occurs at specified times (e.g., at specified ages) and does not exceed the cumulative total of annual percentage increases in an "Eligible Cost-of-Living Index" since the annuity starting date, or if later, the date of the most recent percentage increase. In cases providing such a cumulative increase, an actuarial increase may not be provided

to reflect the fact that increases were not provided in the interim years;

- (C) by a constant percentage of less than five percent (5%) per year, applied not less frequently than annually;
- (D) as a result of dividend or other payments that result from "Actuarial Gains," provided:
 - (i) "Actuarial Gain" is measured not less frequently than annually;
 - (ii) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured);
 - (iii) the "Actuarial Gain" taken into account is limited to "Actuarial Gain" from investment experience;
 - (iv) the assumed interest rate used to calculate such "Actuarial Gains" is not less than three percent (3%); and
 - (v) the annuity payments are not also being increased by a constant percentage as described in this Subsection (iv);
- (E) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section 9.03(d) dies;
- (F) to provide a final payment upon the Participant's death not greater than the excess of the actuarial present value of the Participant's accrued benefit (within the meaning of Code section 411(a)(7)) calculated as of the annuity starting date using the applicable interest rate and the applicable mortality table under Code section 417(e) over the total of payments before the Participant's death;
- (G) to allow a Beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death;
- (H) to pay increased benefits that result from a plan amendment; or

- (l) as a governmental plan, a percentage adjustment based on an increase in compensation for the position held by the Participant at the time of retirement.
 - (2) **Amount required to be distributed by required beginning date and Later Payment Intervals.**
 - (i) The amount that must be distributed on or before the Participant's "Required Beginning Date" (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 9.03(b)(2)(i) or (ii)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Participant's benefit accruals as of the last day of the first "Distribution Calendar Year" will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's "Required Beginning Date."
 - (3) **Additional accruals after first distribution calendar year.** Any additional benefits accruing to the Participant in a calendar year after the first "Distribution Calendar Year" will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefit accrues.
- (d) **Annuity distributions that commence during Participant's lifetime.**
- (1) **Joint life annuities where the Beneficiary is not the Participant's Spouse.** If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse Beneficiary, annuity payments to be made on and after the Participant's "Required Beginning Date" to the Designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant, using the table set forth in Q&A 2(c)(2) of Regulation 1.401(a)(9)-6, in the manner described in Q&A 2(c)(1), to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse Beneficiary and a period certain annuity, the preceding requirements will apply to annuity payments to be made to the "Designated Beneficiary" after the expiration of the period certain.
 - (2) **Period certain annuities.** Unless the Participant's spouse is the sole "Designated Beneficiary" and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Regulation 1.401(a)(9)-9, Q&A 2, for the

calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Regulation 1.401(a)(9)-9, Q&A 2, plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole "Designated Beneficiary" and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section 4.07(d)(2), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Regulation 1.401(a)(9)-9, Q&A 3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(e) **Minimum distributions after Participant's Death.**

- (1) **Death after distributions begin.** If a Participant dies after distribution of the Participant's interest begins in the form of an annuity meeting the requirements of this Section 9.03, the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced.
- (2) **Death before distributions begin.**
 - (i) *Participant Survived by Designated Beneficiary.* If the Participant dies before the date distribution of his or her interest begins and there is a "Designated Beneficiary," the Participant's entire interest will be distributed, beginning no later than the time described in Section 4.07(b)(2)(i) or (ii), over the life of the "Designated Beneficiary" or over a period certain not exceeding:
 - (A) unless the annuity starting date is before the first "Distribution Calendar Year," the "Life Expectancy" of the "Designated Beneficiary" determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
 - (B) if the annuity starting date is before the first "Distribution Calendar Year," the "Life Expectancy" of the "Designated Beneficiary" determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.
 - (ii) *No Designated Beneficiary.* If the Participant dies before the date distributions begin and there is no "Designated Beneficiary" as of

September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (iii) *Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.* If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole "Designated Beneficiary," and the surviving spouse dies before distributions to the surviving spouse begin, this Subsection (e) will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 9.03(b)(2)(i).

(f) Changes to annuity payment period.

- (1) **Permitted changes.** An annuity payment period may be changed only in association with an annuity payment increase described in Section 9.03(c)(1)(iv) or in accordance with Subsection (2) below.
- (2) **Reannuitization.** An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in Subsection (3) below are satisfied and:
 - (i) the modification occurs when the Participant retires or in connection with a plan termination; or
 - (ii) the payment period prior to modification is a period certain without life contingencies.
- (3) **Conditions.** The conditions in this Subsection (3) are satisfied if:
 - (i) the future payments after the modification satisfy the requirements of Code section 401(a)(9), Regulation 1.401(a)(9), and this Section 9.03 (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);
 - (ii) for purposes of Code sections 415 and 417, the modification is treated as anew annuity starting date;
 - (iii) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code section 415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and
 - (iv) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the employee at

the original annuity starting date under Code section 401(a)(9) and this Section 9.03.

(g) Payments to a surviving child.

- (1) **Special rule.** For purposes of this Section 9.03, payments made to a Participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving spouse to the extent the payments become payable to the surviving spouse upon cessation of the payments to the child.
- (2) **Age of majority.** For purposes of this Subsection (g), a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Code section 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

(h) Definitions.

- (1) **Actuarial Gain.** "Actuarial Gain" means the difference between an amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial Gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the Actuarial Gain is determined.
- (2) **Designated Beneficiary.** "Designated Beneficiary" means the individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated beneficiary under Code section 401(a)(9) and Regulation 1.401(a)(9)-4.
- (3) **Distribution Calendar Year.** "Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's "Required Beginning Date." For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 9.03(b)(2).

- (4) **Eligible Cost-of-Living Index.** An "Eligible Cost-of-Living Index" means an index described in paragraphs (b)(2), (b)(3) or (b)(4) of Regulation 1.401(a)(9)-6, Q&A 14.
- (5) **Life expectancy.** "Life Expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation 1.401(a)(9)-9, Q&A-1.
- (6) **Regulations.** For purposes of this Section 9.03, "Regulations" means the Income Tax Regulations under Code section 401(a)(9) as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.
- (7) **Required beginning date.** "Required Beginning Date" means the April 1st of the calendar year following the later of (1) the calendar year in which the Participant attains age 70 1/2, or (2) the calendar year in which the Participant retires.

[Ord. No. 00-O-74 §4, 01-18-01; Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 9.04

RIGHT TO DIRECT ROLLOVER.

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Pension Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

Notwithstanding anything herein to the contrary, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

A Participant may elect to transfer employee (after-tax) or Roth elective deferral contributions (if provided by the Plan) by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income. For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code section 408A(b). For this purpose, the term "eligible rollover distribution" includes a nonspouse beneficiary rollover described in subsection (3) above, if applicable.

For purposes of this Section, the following definitions shall apply:

Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially

equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income, any hardship distribution described in Code section 401(k)(2)(B)(i)(IV), and any other distribution that is reasonably expected to total less than \$200 during a year.

A portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax Participant contributions which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code section 408(a) or (b), or to a qualified defined contribution plan described in Code section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), or a qualified trust described in Code section 401(a), that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in Code section 403(b) and an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p).

Distributee: A distributee includes a Participant or former Participant. In addition, the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), are "distributees" with regard to the interest of the spouse or former spouse.

Effective for distributions made after December 31, 2009, a distributee also includes Participant's nonspouse beneficiary. However, in the case of a nonspouse beneficiary, the rollover must be a direct rollover and only can be made to an individual retirement account or annuity described in Code section 408(a) or 408(b) ("IRA") that is established on behalf of the beneficiary and will be treated as an inherited IRA pursuant to Code section 402(c)(ii). Also, in the case of a nonspouse beneficiary, the determination of any required minimum distribution under Code section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18. If a nonspouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a 60-day (nondirect) rollover.

If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary with the meaning of Code section 401(a)(9)(E).

Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

[Ord. No. 00-O-74 §4, 01-18-01; Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 9.05. QUALIFIED MILITARY SERVICE.

A Participant whose service under the Plan is interrupted by qualified military service shall accrue benefits, as described below. For purposes of this section, qualified military service means any service in the uniformed services (as defined in Chapter 43 of Title 38, United States Code) by an individual if such individual is entitled to reemployment rights under such chapter with respect to such service, and if the individual is actually reemployed under such chapter.

Upon reemployment following qualified military service, the Participant shall be credited with months or years of employment, and years of participation, (collectively referred to as "service") for purposes of section 1.08 and for purposes of computing benefits and eligibility for benefits in sections 4.01, 4.02, and 7.02, and any other sections of the Plan where service is used in the determination of a benefit, as described below. The Participant's service shall include all periods for which the Participant was credited on the last day before such qualified military service, subject to the repayment requirement below. In addition, the Participant's service shall include the period of qualified military service. If the Participant has been paid any benefit with respect to service before the qualified military leave, then the Participant's service following reemployment shall not include any such service unless the Participant repays such benefit (without interest) to the Plan within the period beginning with the date of reemployment and continuing for the lesser of (1) five years; or (2) an amount of time which is the period of qualified military service multiplied by three.

In addition, any contributions, benefits and service credit required to comply with the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) shall be conferred upon an eligible Participant or Beneficiary.

For years beginning after December 31, 2008, (a) an individual receiving a differential wage payment (if provided by the City), as defined by Code section 3401(h)(2), shall be treated as an Employee of the City making the payment, (b) the differential wage payment shall be treated as compensation, and (c) the Plan shall not be treated as failing to meet the requirements of any provision described in Code section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

In the case of a disability occurring on or after January 1, 2007, if a Participant suffers a disability while performing qualified military service (as defined in Code section 414(u)),

In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment on the day immediately preceding the date of death and then terminated employment on the date of death.

SECTION 9.06 **SUSPENSION OF BENEFITS ON REEMPLOYMENT.**

[Ord. No. 00-O-74 §4, 01-18-01; Ord. No. 01-O-54 §10, 08-23-01; Ord. No. 09-O-03 §1, 08-02-12]

(A) Plan Year: Shall mean each 12 month period commencing July 1 and ending on the next June 30.

(B) Code: Shall mean the U.S. Internal Revenue Code as amended. All references to Code sections shall include any applicable rulings and regulations, and as of any future date shall automatically incorporate any amendments to such sections, and shall be deemed to refer to any comparable provisions of any future laws.

ARTICLE X. PENSION COMMITTEE

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effective date of the resignation. In the event of the death, incapacity or resignation of any member, a successor shall be appointed as soon as possible by the Employer; pending such new appointment, the remaining members of the Pension Committee shall have full authority to act.

[Ord. No. 86-25B §12, 08-28-86; Ord. No. 05-O-57 §3, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 10.02.

The Pension Committee shall elect a Chairman, who shall be a member of the Pension Committee, and a Secretary, who need not be a member of the Pension Committee, and minutes shall be kept of all its proceedings. The majority of the Pension Committee shall constitute a quorum. Any action by majority vote of all members shall constitute the action of the Pension Committee. The Pension Committee shall meet together upon call of its Chairman. Members may participate in a Pension Committee meeting by any means allowed under state law.

[Ord. No. 05-O-57 §3, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 10.03.

The Pension Committee shall be charged with the exclusive duty and authority to interpret and construe the provisions of this Plan document, to determine any dispute which may arise with regard to the rights of employees or Participants under the Plan or the terms of this Plan, to give instructions and directions to the Trustee necessary hereunder, to direct the Trustee to pay for insurance coverage, and in general, to direct the administration of the Plan. In addition, the Pension Committee shall also have the responsibility for overseeing the investing of the assets in the Plan and Trust. Such responsibilities will include the adoption of an investment policy statement to provide oversight and guidance for the investment decisions, to retain the services of actuaries, consultants and other vendors to assist them in those responsibilities, and to appoint investment advisors and Investment Managers to manage the investments. In accordance with the investment policy statement, the Pension Committee shall establish investment guidelines and an asset allocation policy, maintain the Plan's actual asset allocation in accordance with these policies, establish specific Investment Manager guidelines, meet periodically to review investment results and Investment Manager performance, periodically consult with Investment Managers to review performance and conformance with the policy statement, and select, hire and terminate Investment Managers and consultants. The consultants and investment advisors shall assist the Pension Committee in the preparation of the investment policy statement and assist the Pension Committee in carrying out its responsibilities under the investment policy statement. As noted in Article XI, all funds contributed to the Plan shall be held in a trust; however, the Pension Committee may appoint one or more entities that meet the requirements of Article XIV as custodians of part or all of the funds in the trust. All decisions of the Pension Committee as to the facts of any case and as to the meaning and intent of any of the provisions of the Plan shall be final and conclusive and binding on all parties concerned. The Pension Committee may from time to time formulate and

issue such rules and regulations, not inconsistent with the declared purposes of this Plan as it may deem necessary to administer and carry out the same.

[Ord. No. 05-O-57 §3, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 10.04.

The Pension Committee shall keep records containing all relevant data pertaining to all Participants and shall, upon request, make such records available to a Participant or Participant's legally authorized representative. The Employer may at any time inspect all records of the Pension Committee.

[Ord. No. 05-O-57 §3, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 10.05.

Except for gross negligence, willful misconduct or willful breach of this Plan, no member of the Pension Committee shall incur any individual liability for any act or failure to act pursuant to this Plan. No member of the Pension Committee shall be liable for the act of any other member and the Pension Committee shall be relieved of all responsibility whatsoever for anything done or not done upon the written advice of counsel, who may be counsel for the Employer.

[Ord. No. 05-O-57 §3, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 10.06.

The members of the Pension Committee shall serve without compensation for services, but all expenses of the Pension Committee shall be paid by the Employer.

[Ord. No. 05-O-57 §3, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE XI. TRUSTEE

SECTION 11.01.

All funds contributed to the Plan shall be in a trust. The Trustee of the trust shall be a bank or trust company authorized and doing business in the State of Tennessee. The Trustee shall be selected by the Employer and shall enter into its duties as Trustee upon its written acceptance of the provisions of this Plan.

[Ord. No. 76-15 §1, 05-13-76; Ord. No. 05-O-57 §4, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 11.02.

The Trustee shall have the powers necessary for the official performance of its duties, which include the following:

- (A) To invest the funds in the Plan in accordance with the directions of the Pension Committee and the investment policy statement adopted by the Pension Committee.
- (B) If so directed by the Pension Committee, to invest, manage and control assets assigned to the Trustee to be invested at its discretion subject to the objectives, standards and guidelines provided to it by the Pension Committee and in accordance with the investment policy statement.
- (C) It shall keep complete records and accounts of the administration of the trust, including records of receipts and disbursements and all expenses borne by the trust.
- (D) It shall receive the contributions of the Employer and apply such contributions in the manner herein provided.
- (E) It shall pay from the funds in the Plan the benefits provided for under the Plan to the Participants in the amounts and in the manner as so directed by the Employer and report to the Participants and the Internal Revenue Service such payments on the appropriate Internal Revenue Service forms and file such forms with the Internal Revenue Service.
- (F) It shall at least quarterly within thirty (30) days following the end of each calendar quarter furnish the Employer a complete report of the receipts and disbursements of the trust during the preceding quarter.
- (G) It shall be warranted in relying upon the existence of any fact or set of facts represented to it in writing by the Employer or by the Pension Committee.

[Ord. No. 05-O-57 §4, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 11.03.

Except to the extent the Trustee is delegated the responsibilities of managing a part of the assets assigned to it as provided in Section 11.02(B), the Trustee shall have no liability with respect to the investment of the trust assets, but shall be responsible only to execute such investment instructions as so directed.

[Ord. No. 05-O-57 §4, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 11.04.

The Trustee shall not be liable for any loss which may occur from error of omission or commission except for willful negligence, malfeasance or misfeasance.

[Ord. No. 05-O-57 §4, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 11.05.

Subject to the direction of the Pension Committee and the investment policy statement on the management of part of the funds by the Trustee, the Trustee may with regard to

such funds invest in any common trust or collective funds operated by the Trustee. Such collective funds shall constitute an integral part hereof, and are hereby incorporated herein by reference.

[Ord. No. 05-O-57 §4, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 11.06.

The Trustee shall not be required to give any bond for the faithful performance of its duties hereunder, unless the same is required by the Employer, who shall pay the expense thereof.

[Ord. No. 05-O-57 §4, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 11.07.

As noted in Article X, the Pension Committee shall administer the Plan and the Trustee shall not be responsible in any respect for administering the Plan except as otherwise stated in this Plan or in a separate written agreement, nor shall the Trustee be responsible for the adequacy of the funds in the trust to meet and discharge all payments and liabilities under the Plan. The Trustee shall be fully protected in relying upon any written notice, instruction, direction or other communication signed by a representative of the Pension Committee authorized to sign the same on its behalf. The Employer from time to time shall furnish the Trustee with the names of those persons authorized to execute documents and to give directions on behalf of the Employer and the Pension Committee. Until notified to the contrary, the Trustee shall be fully protected in relying upon the most recent list of the authorized representatives of the Pension Committee and officers of the Employer furnished to it by the Employer.

[Ord. No. 05-O-57 §4, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 11.08.

Unless the Trustee knowingly participates in, or knowingly undertakes to conceal, an act or omission of an Investment Manager, knowing such act or omission to be a breach of the fiduciary responsibility of the Investment Manager with respect to the Plan, the Trustee shall not be liable for any act or omission of any Investment Manager, and shall not be under any obligation to invest or otherwise manage the assets of the Plan that are subject to the management of any Investment Manager.

[Ord. No. 05-O-57 §4, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 11.09.

To do all other acts that the Trustee may deem necessary or proper to carry out any of its responsibilities set forth in this Article XI hereof, or otherwise in the best interests of the Plan.

[Ord. No. 05-O-57 §4, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 11.10.

The Trustee shall hold office until it shall resign by mailing written notice to the Employer ninety (90) or more days in advance of the date of such resignation, or until written notice of removal as Trustee is mailed by the Employer thirty (30) days or more in advance of the date of such removal. In the event of resignation or removal of the Trustee, the Trustee shall transfer, assign, convey and deliver the trust, assets and records to the successor Trustee who shall, upon acceptance of the trust, become vested with all the rights, powers, duties and obligations of the predecessor Trustee without further action, deed or conveyance. Notwithstanding the foregoing, if the Trustee is being retained to serve as Custodian of some or all of the trust assets, then pursuant to an agreement with the successor Trustee of such assets, the Trustee will retain custody of such assets in its capacity as Custodian. The Employer shall have the right to select a successor Trustee in the event of resignation or removal of a Trustee.

[Ord. No. 05-O-57 §4, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE XII. INVESTMENT MANAGERS

SECTION 12.01.

As noted in Article X, the Pension Committee may appoint one or more Investment Managers to manage (including the power to acquire and dispose of) a specific portion of the assets of the Plan. Any Investment Manager so appointed must be either (a) an investment advisor registered as such under the Investment Advisors Act of 1940, (b) a bank or (c) an insurance company qualified to perform services in the management, acquisition or disposition of the assets of the Plan under the laws of more than one state; and any Investment Manager so appointed must acknowledge in writing to the Pension Committee and to the Trustee that it is a fiduciary with respect to the Plan. As provided in Section 11.02(B), the Trustee may be appointed as an Investment Manager for part of the funds in the Plan. The Trustee, until notified in writing to the contrary, shall be fully protected in relying upon any written notice of the appointment of an Investment Manager furnished to it by the Pension Committee.

[Ord. No. 05-O-57 §5, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 12.02.

Each Investment Manager appointed pursuant to this Article XII shall have exclusive authority and discretion to manage and control the assets of its segregated funds subject to the provisions regarding the investment of an Investment Manager's segregated funds set forth in such Investment Manager's investment contract with the Pension Committee and pursuant to the direction of the Pension Committee and the investment policy statement approved by the Pension Committee for the Plan, and shall

be fully protected in relying upon such direction from time to time at any time in respect of that segregated fund.

[Ord. No. 05-O-57 §5, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE XIII. FIDUCIARY RESPONSIBILITIES

The Trustee and the Investment Managers and any other fiduciaries for the Plan shall discharge their respective duties under this Plan solely in the interests of the Participants in the Plan and their beneficiaries, and (i) for the exclusive purpose of providing benefits to such Participants and their beneficiaries and defraying reasonable expenses of administering the Plan; (ii) with the care, skill, prudence and diligence under the circumstances then prevailing that a reasonable prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; (iii) by diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (iv) in accordance with the provisions of this Plan; but the duties and obligations of the Trustee and any Investment Manager as such shall be limited to those expressly imposed upon them, respectively, by this Plan.

[Ord. No. 05-O-57 §6, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE XIV. CUSTODIAN

As noted in Article X, the Pension Committee may appoint one or more entities to serve as Custodian for part of the assets in the trust. Such entities must be a bank or a trust company and the Trustee may be appointed as a Custodian. The Pension Committee shall direct the Trustee to enter into an agreement with the appointed Custodian to take custody of the funds assigned to it and carry out the responsibilities and duties specified in the written agreement.

[Ord. No. 05-O-57 §7, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE XV. AMENDMENT OF THE PLAN

SECTION 15.01.

Subject to the provisions of Sections 15.02 and 15.03, the Employer may, without the consent of any other party, amend the Plan at any time. Any such amendment shall be made by a written instrument executed by such Employer on the order of its governing body and filed with the Trustee, and shall become effective as of the date specified in such instrument.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 15.02.

No amendment shall vest in the Employer, directly or indirectly, any right, title, or interest in or control over the trust fund, or any portion thereof. No part of the trust fund shall, by reason of any amendment, be used for, or diverted to, purposes other than for the exclusive benefit of Participants, Retired Participants, and their beneficiaries. No amendment shall reduce any vested right or interest to which any Participant, Retired Participant, or beneficiary is then entitled hereunder. The Employer may, however, make such retroactive amendments as may be required by the Internal Revenue Service in order to qualify or keep qualified the Plan under the appropriate provisions of the Internal Revenue Code.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 15.03.

If any amendment affects the rights, duties, responsibilities, or obligations of the Trustees hereunder, such amendment may be made only with the consent of the Trustee.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE XVI. TERMINATION OF THE PLAN

SECTION 16.01.

The Employer reserves the right to terminate the Plan at any time. A termination of the Plan shall be evidenced by a written termination notice executed by the Employer on the order of its governing body and delivered to the Trustee. Termination of the Plan shall be effective as of the termination date specified in such termination notice, but such termination shall not vest in the Employer any right, title or interest in or to the funds held by the Trustee.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 16.02.

In the event the Plan is terminated the rights of all affected Participants, Retired Participants, Participants with a Disability and Beneficiaries shall, to the extent then funded, be non-forfeitable. After providing for the payment of expenses of the Plan, the Pension Committee shall allocate the assets of the Plan among the Participants, Retired Participants, Participants with a Disability and Beneficiaries of the Plan in a manner deemed equitable by the Pension Committee, which manner may include the purchase of annuity policies issued by a licensed insurance company guaranteeing payment to the Participants, Retired Participants, Participants with a Disability and Beneficiaries of their accrued benefits in any manner which they may elect under the terms of the Plan.

In the event that any funds remain after all accrued benefits for all Participants, Retired Participants, Participants with a Disability and Beneficiaries have been guaranteed, the remaining funds shall revert to the Employer.

[Ord. No. 00-O-74 §2, 01-18-01; Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 16.03 RESERVED.

[Ord. No. 00-O-74 §3, 01-18-01; Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 16.04 RESERVED.

[Ord. No. 00-O-74 §3, 01-18-01; Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

ARTICLE XVII. MISCELLANEOUS

SECTION 17.01.

The adoption and maintenance of the Plan shall not be deemed to constitute a contract between the Employer and any Participant or employee, or to be a consideration for, inducement to, or condition of Employment of any person. Nothing herein contained shall be construed to give any Participant the right to be retained in the employ of the Employer or to interfere with the right of the Employer to terminate the Employment of any Participant at any time.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 17.02.

Wherever it is herein provided that any person or persons concerned with the administration of the Plan shall exercise discretion in the making of any decision, such discretion shall be so exercised so as not to discriminate among persons similarly situated.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 17.03.

A copy of this Plan and any and all future amendments thereto shall be available to Plan Participants for inspection at all reasonable times.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 17.04.

Except as to indebtedness to the Employer, no right or interest of any kind in the trust fund shall be transferable or assignable by a Participant or Retired Participant or their beneficiaries, or be subject to alienation, encumbrance, garnishment, attachment, execution, or levy of any kind, voluntary or involuntary. If any Participant attempts to alienate or assign such benefits or should such benefits be subject to any of the above legal or equitable processes, the Trustee shall take the necessary steps so that such benefit shall not be available to the Participant, but shall be used by the Trustee for the benefit of the Participant or for the Participant's beneficiaries.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 17.05. RESERVED

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 17.06.

Under no circumstances shall any part of the corpus or income of this trust be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and beneficiaries. The Plan shall at all times be interpreted and administered in accordance with the applicable provisions of Section 401(a) of the Internal Revenue Code of 1986, as now in effect or as hereafter amended. Any funds contributed to this trust or any assets of this trust shall never revert to or be used or enjoyed by the Employer.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 17.07.

The Plan embodied herein shall be construed according to the laws of the State of Tennessee where it is made and where it shall be enforced.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 17.08.

Neither the Employer nor the Trustee shall be responsible for the validity of any policies or for the failure on the part of the insurer to make any payments or provide any benefit under any policy, or for the action of any person or persons which may render any policy invalid or unenforceable. Neither the Employer nor the Trustee shall be responsible for any inability to perform, or for any delay in performing any act occasioned by any restriction or provision of any policy imposed by the insurer or by any other person or entity. In case it becomes impossible for the Employer or the Trustee to perform any act under this Plan, that act shall be performed which, in the judgment of the Trustee, will most nearly carry out the intent and purposes of this Plan. All parties to this Plan or in any way interested herein shall be bound by any act performed under such conditions.

[Ord. No. 05-O-57 §2, 09-15-05; Ord. No. 09-O-03 §1, 08-02-12]

SECTION 17.09.

The Employer may choose to contract for insurance policies which provide greater benefits to Participants than those specified in this Plan and to direct that the cost of such insurance policies shall be paid for with Plan assets. Neither the existence of such contracts nor the payment of benefits under such contracts to other Participants shall create any right in any Participant, or in any beneficiary of any Participant, to any benefit other than as specified in the Plan.

[Ord. No. 09-O-03 §1, 08-02-12]

END OF APPENDIX C.